

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Second Appeal No.1102 of 2012

JUDGMENT:

This second appeal by the unsuccessful plaintiffs 1, 2 and 5 is directed against the decree and judgment dated 05.03.2012 of the learned VII Additional District Judge, Kakinada of East Godavari District passed in A.S.No.178 of 2007. The learned Additional District Judge while dismissing the said appeal had confirmed the decree and judgment dated 21.06.2007 of the learned Senior Civil Judge, Pithapuram passed in O.S.No.82 of 2004 filed for perpetual injunction by the plaintiffs 1 to 5 including the appellants herein against the defendants restraining them from ever interfering with the plaintiffs' peaceful possession and enjoyment over the plaint schedule property of Ac.52.34 cents of zeroithi dry land with mango and cashew nut trees covered by Sy.No.267 situated at Namagiri Narendrapatnam village, Tuni Mandal, more fully described in the schedule annexed to the plaint.

2. This Court upon hearing the learned counsel for the appellants had formulated the following substantial questions of law:

- (i) **Whether the Court below committed a grave error in dismissing the suit of the plaintiffs for perpetual injunction having found that the plaintiffs came into possession of the suit schedule property subsequent to the compromise decree in O.S.No.124 of 1965?**
- (ii) **Whether the judgment of the court below that the plaintiffs are not entitled to a perpetual injunction in view of the fact that their application in IA No.587 of 2007 which is filed for amendment of the plaint was dismissed is vitiated? Whether the finding of the court below that dismissal of the said IA does not entail the plaintiffs to a perpetual injunction is erroneous?**
- (iii) **Whether the judgment of the court below is vitiated for ignoring exhibits A5 to A12 adangals?**

3. I have heard the submissions of the learned counsel for the appellants and the learned counsel for the respondents.

4. To adjudicate the *lis* and to answer the substantial questions of law, it is necessary to refer to, *infra*, the pleadings.

4. (a) The case of the plaintiffs and the plaint averments, in brief, are as follows: “The plaintiffs 1 and 2 are brothers and sons of late Chandrayya Naidu. The plaintiffs 3 and 4 are brothers and are sons of Challayya Naidu. The plaintiffs 1 to 4 are cousins. The 5th plaintiff is the maternal aunt’s son of the plaintiffs 1 and 2. Chandrayya @ Challayya Naidu, who is the father of the plaintiffs 1 and 2, Mallayya Naidu, the paternal grand father of the plaintiffs 3 and 4, Dungala Sanyasayya @ Sanyasi who is the father of the 5th plaintiff and B.Adinarayana together filed a suit in O.S.No.124 of 1965 on the file of the Court of the I Additional Subordinate Judge, Kakinada against Geddam Demudu and 43 others for declaration of their title to the plaint schedule properties therein and for possession of the same after evicting the defendants there from and for other incidental reliefs. The said suit was initially contested by the defendants therein. Subsequently, the said suit was compromised amongst the plaintiffs and the defendants therein where under the right and the title of the plaintiffs with regard to an extent of Ac.52.34 cents of land out of the plaint schedule property therein was to be declared and possession was to be given to them. Accordingly, a compromise decree was passed on 23.10.1979. Pursuant to the said compromise decree, the plaintiffs therein and thereafter the plaintiffs herein as absolute owners have been in possession and enjoyment of the said property, which corresponds to the plaint schedule property herein. The defendants have no manner of right over the plaint schedule property. Pursuant to the said compromise decree, the defendants 1 to 17 herein and others were given Ac.30.54 cents of land out of the total extent of Ac.82.88 cents of the plaint schedule property in that suit, i.e., O.S.No.124 of 1965. Since then, the defendants herein and the others have been in possession and enjoyment of the said extent of land. Thus, the plaintiffs have nothing to do with the land that fell to the share of the defendants as per the said compromise decree. The plaintiffs have raised cashew nut and mango trees in the plaint schedule property. They are also paying the land revenue thereto. The land revenue receipts are being issued in the name of Medapureddy Chandrayya Naidu. Even though the parties had compromised the matter as long back as in the year 1979 and the respective parties are in possession and enjoyment of their respective properties without the concern of others, the defendants and others bore grudge against the plaintiffs. The defendants and others are always bent upon causing some loss or the other to the plaintiffs and their properties. In this background, the father of the plaintiffs 1 and 2 was murdered in broad day light on

29.11.1996 while he was proceeding to attend to the Munsif Magistrate Court at Tuni. While so, the defendants 1 and 2 in this suit along with others had filed a suit in O.S.No.155 of 1997 on the file of the Court of the 1st Additional Subordinate Judge, Kakinada with regard to Ac.30.54 cents of land that fell to their share as per the compromise decree in O.S.No.124 of 1965 seeking permanent injunction against the plaintiffs along with other incidental reliefs. The said suit was filed by making false and incorrect allegations. They had also succeeded in obtaining an *ex parte* interim injunction against the plaintiffs, with regard to the said property, in I.A.No.440 of 1997. The defendants herein under the colour of the *ex parte* interim injunction obtained by them against the plaintiffs herein are trying to enter into the plaint schedule property and take away the mangoes and cashew nuts from the plaint schedule property with a view to cause loss to the plaintiffs and get themselves unduly enriched without any manner of right whatsoever. In the above said circumstances, the plaintiffs who are interested in the protection of their right over the plaint schedule property are entitled to seek a permanent injunction against the defendants, their men and nominees from ever interfering with their possession and enjoyment of the plaint schedule property in any manner whatsoever. Subsequent to the filing of the suit, the 2nd defendant had died leaving behind him his wife, two sons and two daughters who are added as defendants 19 to 23 as his nearest legal heirs. Since the defendants 19 to 23 had succeeded to the estate and they are also colluding with the other defendants and are trying to interfere with the possession and enjoyment of the plaintiffs over the suit properties, they are added as parties to this suit. The 4th and 6th defendants also died intestate subsequent to the filing of the suit leaving behind them, the defendants 24 to 29 and 30 to 35 as their nearest legal heirs. Since the defendants 24 to 29 and 30 to 35 succeeded to the estate of the 4th defendant and as they are also bent upon interfering with the possession and enjoyment of the plaintiffs over the plaint schedule property, they are also added as parties to the suit. The defendants are falsely contending that possession of the plaint schedule property was not taken from the Receiver after the compromise in O.S.No.124 of 1965 on the file of the Subordinate Judge, Kakinada. In fact, each party took possession of the properties as per the compromise decree and on that count only, the defendants came into possession of Ac.30.54 cents of the land and the predecessors of the plaintiffs also came into possession of the plaint schedule property and each party is enjoying the properties as per the

compromise decree in O.S.No.124 of 1965 on the file of the Subordinate Judge, Kakinada. Otherwise, the entire land shall continue in possession of the Receiver or the auction purchaser of the lease hold rights in respect of the entire property in an extent of Ac.82.88 cents. If for any reason the Hon'ble Court comes to the conclusion that the plaintiffs have not proved that the decree holders in O.S.No.124 of 1965 took possession of the plaint schedule property as per the compromise, the plaintiffs alternatively pray the court to grant a decree for possession of the plaint schedule property. Hence, the suit is filed."

4. (b) On the other hand, the case of the defendants and their defence is as follows:

"The suit of the plaintiffs is not maintainable. As per the compromise decree, the defendants therein are obliged to put the plaintiffs therein into possession of Ac.52.34 cents of land out of the total extent of Ac.82.88 cents of land and the defendants are to retain and continue in possession in the remaining Ac.30.54 cents of the plaint schedule property therein. Thereafter the defendants therein had retained Ac.30.54 cents of land, which is the subject matter of O.S.No.155 of 1997 on the file of I Additional Subordinate Judge, Kakinada and asked the plaintiffs herein to take possession of Ac.52.34 cents of land as per the compromise decree dated 23.10.1979. Since then, the plaintiffs herein or their representatives having not taken possession have been never in possession and enjoyment of the remaining Ac.52.34 cents out of the plaint schedule property. The plaintiffs herein were never in possession of the remaining Ac.52.34 cents of land or any part of Ac.82.88 cents. It is the third parties who have been in possession and enjoyment of the said land from the beginning of 1980 and those third parties raised cashew nut and mango trees therein, but not the plaintiffs herein. The plaintiffs are fully aware of the fact that they cannot dispossess and evict the persons who are in possession and enjoyment of the remaining Ac.52.34 cents of land. The suit is bad for non-joinder of parties. The suit is filed for injunction only without asking any declaration. They have neither title nor possession of Ac.52.34 cents of land covered by suit O.S.No.155 of 1997. The suit is not maintainable. The suit is a speculative one and is filed with false allegations and hence, the suit is liable to be dismissed."

4. (c) Taking into consideration the above pleadings, the trial Court had framed the following issues.

1. Whether the schedule property in an extent of Ac.52.34 cents has been in possession and enjoyment of the plaintiffs?
2. Whether there is interference from the defendants with the alleged possession and enjoyment of the plaintiffs?
3. Whether the suit for permanent injunction is maintainable without any relief for declaration?
4. Whether the plaintiffs are entitled for the permanent injunction as prayed for?
5. To what relief?

4. (d) Before the trial Court, PWs 1 to 5 were examined and exhibits A1 to A4 are marked. On behalf of the defendants, the 1st defendant was examined as DW1 and no documents were exhibited. The trial Court, having considered the oral and documentary evidence had dismissed the suit of the plaintiffs. In the first appeal, the 1st appellate court had framed the following points:

- 1. Whether the plaintiffs are entitled for injunction restraining the defendants from interfering with the peaceful possession and enjoyment over the schedule property?**
- 2. Whether the judgment and decree dated 21.06.2007 on the file of the Senior Civil Judge Court, Pithapuram in O.S.No.82/04 is to be set aside or not?**

3. To what relief?

Exhibits A5 to A13 were received as additional evidence in the first appeal suit. The court below had confirmed the decree and judgment of the trial Court and had dismissed the first appeal. Hence, this second appeal was preferred by the plaintiffs 1,2 and 5.

5. I have heard the submissions of the learned counsel for the appellants/ plaintiffs 1, 2 and 5 ('the appellants', for brevity) and the learned counsel for the contesting respondents/defendants ('the respondents', for brevity). The plaintiffs who did not join the other plaintiffs/appellants in preferring this second appeal are shown as respondents 37 and 38 in this second appeal. I have carefully perused the material record including the oral and documentary evidence.

6. (a) Now, the substantial questions are taken up.

6. (b) The plaintiffs 1 and 2 are natural brothers and are sons of Chandrayya Naidu.

The plaintiffs 3 and 4 are natural brothers and are sons of Challayya Naidu. Thus, the plaintiffs 1 to 4 are the cousins. The 5th plaintiff is the son of maternal aunt of the plaintiffs 1 and 2.

6. (c) The learned counsel for the appellants would contend as follows:

Pursuant to a compromise decree dated 23.10.1979 in O.S.No.124 of 1965, the plaintiffs therein had come into possession of Ac.52.34 cents of land. The compromise was acted upon. The defendants therein had got the other extent of land. Admittedly, the defendants therein are enjoying the property that was allotted to them, pursuant to the said compromise. The courts below ought to have seen that the plaintiffs filed tax receipts and the copies of the Adangals to prove their possession over the suit schedule property. The courts below ought to have seen that the contesting defendants are not disputing that the above extent of Ac.52.34 cents was allotted to the share of the plaintiffs in O.S.No.124 of 1965 pursuant to a compromise decree therein. The only contention of the defendants herein is that possession of Ac.52.34 cents was not obtained by the plaintiffs therein pursuant to the compromise decree. The courts below ought to have seen that the defendants are not claiming any right, title over the land of Ac.52.34 cents as the same was admittedly allotted to the plaintiffs in O.S.No.124 of 1965 as per the compromise decree. The courts below ought to have seen that apart from the tax receipts, the plaintiffs herein had also filed and exhibited exhibits A 5 to A12 to prove their possession over the schedule property. To avoid any ambiguity and complexity in the matter, the plaintiffs got filed a petition for amendment of the plaint and sought the relief of recovery of possession alternatively, in case the courts come to the conclusion that the plaintiffs do not have possession over the suit schedule property. However, the said application was unfortunately dismissed and the said orders of dismissal have become final. The court below had failed to properly appreciate the facts and the circumstances in which the said relief was claimed by the plaintiffs and had erroneously held that since the plaintiffs had filed an application for amendment seeking recovery of possession of the property, it amounted to an admission by the plaintiffs that they are not in possession of the suit schedule property. The appellate Court having allowed the interlocutory application in I.A.No.580 of 2010 in A.S.No.175 of 2007 filed under Order XLI Rule 27 of the Code and having granted leave to adduce/produce additional evidence had failed to properly appreciate the documentary evidence and erred in holding that the plaintiffs could not establish

possession. The courts below ought to have seen that none of the defendants had claimed khas possession over the suit schedule property and their only contention is that some third parties are in possession, but they did not specifically plead and establish as to who are the said third parties in possession of the property. The finding in the judgment of the court below that the plaintiffs had alternatively sought for recovery of vacant possession of the suit schedule property and that the same would amount to an admission on their part that they are not in possession is erroneous, more particularly when it is an alternative relief prayed for, for abundant caution and the said alternative relief sought for by way of amendment of plaint was not permitted by the courts. The court below had failed to appreciate the admitted facts, the facts established and the evidence in proper perspective and had erred in dismissing the suit for perpetual injunction of the plaintiffs even though there is no semblance of defence to deny the relief to the plaintiffs/appellants.

6. (d) On the other hand, the learned counsel for the contesting defendants, while supporting the decrees and the judgments of the courts below had contended that though the land of Ac.52.34 cents was allotted to the plaintiffs as per the compromise decree dated 23.10.1979 passed in O.S.No.124 of 1965, the plaintiffs were and are not in possession of the suit schedule property at any time and that the fact that the defendants in the earlier suit were allotted some other property and that they came into possession of that property and that the said fact also indicates that the plaintiffs had already come into possession of the property allotted to their predecessors pursuant to the compromise decree cannot be countenanced as in a suit for perpetual injunction, the plaintiffs have to establish their possession as on the date of the suit and at all relevant times and that the plaintiffs in this case had failed to establish their possession, which is a *sine qua non* for granting perpetual injunction and that at any rate, the plaintiffs having filed an application for amendment of the plaint and having sought an alternative relief for recovery of possession, in case, the court comes to the conclusion that the plaintiffs are not in possession, had thus admitted that they are not in possession of the suit schedule property and that, therefore, the findings of the court below confirming the finding of the trial court in all respects are sustainable being well-reasoned findings and that there is no substance in the substantial questions of law raised in the second appeal and that no such substantial questions are involved and that the second appeal is devoid of merit and is liable to be dismissed.

6. (e) To begin with, the relationship of the parties mentioned in the pleadings is not in dispute. The father of the plaintiffs 1 and 2, i.e., Chandrayya Naidu @ Chandrayya, one Mallayya Naidu, the paternal grandfather of the plaintiffs 3 and 4, Dungala Sanyasayya @ Sanyasi, the father of the 5th plaintiff and B.Adinarayana together had filed the suit O.S.No.124 of 1965 against Geddamm Demudu and (43) others on the file of I Additional Senior Civil Judge, Kakinada for declaration of their title to the plaint schedule property in the said suit and for recovery of possession of the same. The defendants therein had contested the said suit. Ultimately, the said suit ended in a compromise. As per the compromise decree dated 23.10.1979 in the said suit, the plaint schedule property in the present suit was allotted to the predecessors-in-interest of the plaintiffs herein and another remaining Ac.30.54 cents of land was allotted to the predecessors of the defendants herein. The certified copy of the compromise decree is exhibit A1. Though the defendants herein admit that under the aforementioned compromise decree, the plaint schedule property was allotted to the predecessors-in-interest of the plaintiffs herein, their only defence is that neither the predecessors of the plaintiffs nor the plaintiffs herein had taken possession of the plaint schedule property, i.e., property that was allotted under the compromise decree and that the said property always had remained in possession and enjoyment of the defendants and that therefore, the plaintiffs are not entitled to the relief of perpetual injunction. Now, the core question is as to whether the property that was admittedly allotted to the predecessors-in-interest of the plaintiff, i.e., the plaint schedule property was taken possession of, pursuant to the allotment of that property under the compromise decree under the original of exhibit A1. A careful perusal of the decree would show that the defendants in the said suit were allotted Ac.28.54 cents in Narendrapatnam in Sy.No.66 and that out of Ac.54.34 cents, Ac.2.00 cents is allotted to the defendants and that remaining Ac.52.34 cents is allotted to the plaintiffs therein and that out of that extent Ac.28.54 cents shall be taken possession as per the sketch prepared by the Deputy Tahasildar attached to the order of the Settlement Officer dated 04.07.1973. A perusal of the compromise decree would also lay bare that a Receiver was appointed and that the Receiver had auctioned the rights to cultivate the lands and that the auction purchaser had a right to be in possession till the end of April 1980 and that afterwards, the respective parties shall have possession of their respective allotted lands as per the compromise decree and enjoy the lands. It is also stated in the compromise decree that an amount Rs.9940/- is in deposit and that a sum of Rs.5500/- shall be taken by

the plaintiffs and the balance shall be taken by the defendants. In support of their case, the plaintiffs herein had filed the land revenue receipts for the Fasli 1403 and 1404 under exhibit A2 dated 24.02.1995 besides other documents to show that the land revenue was paid by PW1 insofar as his share of Ac.8.00 of land out of the plaint schedule property. The plaintiffs had also adduced oral evidence to show that they are in possession and enjoyment of the plaint schedule property. The only witness examined on the side of the defendants was DW1 and no documents were marked on the side of the defendants. The defendant in his examination-in-chief admitted that the defendants are in possession and enjoyment of Ac.30.54 cents, which was allotted to the defendants, pursuant to the compromise decree and had further stated in his affidavit in lieu of examination-in-chief that though the matter is settled, the plaintiffs in O.S.No.124 of 1965 did not choose to occupy the remaining Ac.52.34 cents and that as the plaintiffs in that suit did not occupy the said extent of land, his family members and the other defendants had continued in possession and enjoyment of the said land along with the land allotted to them, i.e., Ac.30.54 cents. Thus, according to the examination-in-chief of DW1, the defendants are continuing in possession of the entire Ac.82.88 cents without any interruption and obstruction. He had also deposed that he and the other defendants in O.S no.155 of 1997 had filed a suit against the plaintiffs for perpetual injunction and in that suit, the plaintiffs admitted their possession and enjoyment in respect of Ac.30.54 cents and that as a counter blast to that suit, the present suit is filed. As already noted, he did not file any documents to show that he and the other defendants are in possession of the present plaint schedule lands. He did not even file the plaint in his suit to show as to what are the boundaries of Ac.30.54 cents of land of the defendants herein in respect of which there is no dispute. In his cross-examination, he had categorically admitted that he does not know the contents of the plaint in the present suit and had asserted that the entire extent of Ac.84.56 cents covered by Sy.no.66 belongs to the defendants. He had further admitted that as per the compromise decree, the defendants are entitled to Ac.30.54 cents and that the remaining extent was allotted to the father of PW1 and that he is not aware of the compromise decree in O.S.No.124 of 1965, copy of which is marked as exhibit A1. He had further stated that he did not have any document to show that the extent of land allotted to them under exhibit A1 was handed over to them by the court Receiver. In his deposition, he had also stated as follows:

“I have no document to show that the extent of land allotted to us under Ex.A1 was handed over to us by the Court Receiver. It is not true to say that as per Ex.A1 father of PW1 and others and after his demise the plaintiffs herein are in possession and enjoyment of Ac.52.34 cents. I have not verified whether the plaintiffs filed the land revenue receipt in this suit showing the payment of land revenue under exhibit A2. We paid land revenue over the land, I cannot say we paid the land revenue till which year. We paid the land revenue for the entire extent of Ac.84.54 cents. I cannot say how much amount of land revenue I paid. I cannot say for how many years I paid the land revenue. The village officer gave receipts for the payment of land revenue by me.”

Admittedly, the property as on the date of the compromise was *custodio legis* and when the Receiver auctioned the rights to cultivate the land a third party who became successful bidder had come into possession of the land and he was entitled to be in possession till the end of April 1980 in the entire land of Ac.82.88 cents for which Receiver was appointed. DW1 had also stated that he knows that the plaintiffs had filed the suit for Ac.52.34 cents and he does not know whether it is stated in his written statement that the defendants never interfered with Ac.52.34 cents. He was able to state that there are trees in his land, but was unable to say the number of trees in the plaint schedule property though he had admitted that there were fruit bearing mango and cashew nut trees and that they are ten years old. The 1st defendant herein is the 1st plaintiff in O.S.No.155 of 1997. The copy of the plaint in the said suit is marked as exhibit A3. That suit was filed by DW1, the 1st defendant herein and others against the plaintiffs herein and others. That suit was filed for Ac.30.54 cents of dry land only and not for the present suit schedule property. The Southern boundary of that suit schedule land was described as the remaining land of the defendants therein in the same survey number. Therefore, the plaint averments in the said suit (O.S.No.157 of 1997) filed by the 1st defendant herein and others clearly reveal that the plaintiffs herein are in possession of Ac.52.34 cents that was allotted to their predecessors in interest pursuant to the compromise decree in O.S.No.124 of 1965. This admission in the pleadings in the said plaint of the 1st defendant and the others, who are plaintiffs in the said suit, goes a long way; and, by any standards, the said admission is itself sufficient to hold that the present plaintiffs were and are in possession of the present suit schedule land and that the said fact is

admitted by the defendants in the instant suit. In the well considered view of this court, the evidence brought on record would show that the plaintiffs are entitled to have lawful possession of the plaint schedule land as the same was allotted to their predecessors pursuant to the compromise decree. Therefore, the plaintiffs herein are having right, title and interest over the same. The only contention of the defendants in the defence is that though the plaintiffs' predecessors were allotted the suit land under the compromise decree, neither their predecessors nor the plaintiffs have taken possession of the suit land. The said contention appears to be incorrect as, as on the date of the compromise, the property was *custodia legis* being in possession of a Receiver of the court; there is also recital in the compromise decree that since the property is in possession of a third party, who is cultivating it having become a successful bidder in the auction conducted by the Receiver, the parties who are allotted respective extents of land shall take possession of their respective extents of land after culmination of the right to possession of the said person in possession pursuant to the auction held by the Receiver. The said person's right to be in possession came to an end by the end of April, 1980. Even the defendants do not have any record to show that the Receiver had delivered possession of their extents of land to them after April 1980. Therefore, on the ground that the plaintiffs did not produce any documents to show that possession of the land was delivered to their predecessors pursuant to the compromise, it cannot be said that their predecessors did not take possession of their share of land, which was allotted to them under the compromise as the scales have to be applied evenly to both the parties placed in similar circumstances. Both the Courts did not take note of the fact that except oral assertions, DW1 did not produce a single piece of document to show that the defendants were/are in possession of the suit land while on the other hand, the plaintiff had produced land revenue receipts as well as plaint copy in O.S.No.155 of 1997, which is filed by some of the defendants herein, wherein, while describing the schedule of the property of the defendants herein in an extent of Ac.30.54 cents, the defendants have clearly shown the Southern boundary as the property of the defendants therein, i.e., the plaintiffs herein in the same survey number. As already noted, in the defence, it is not pleaded that the defendants are in possession of the plaint schedule land and it is only averred in the defence that third parties have been in possession and enjoyment of the said land from the beginning of 1980 and that those third parties raised cashew nut and mango trees therein, but not the plaintiffs herein. There is no mention either in the pleading or in the evidence of DW1 as to

who are the third parties who are allegedly in possession of the plaint schedule land that was admittedly allotted to the predecessors-in-interest of the plaintiffs pursuant to the compromise decree. Even one single third party who is allegedly in possession was examined to substantiate the defence. Therefore, the contention that either the defendants or some third parties are in possession of the plaint schedule land and not the plaintiffs herein cannot be countenanced. On a careful examination of the pleadings in juxtaposition with the evidence, this Court finds that both the courts did not consider the evidence in the right perspective and ignored the material evidence, namely, exhibit A3, the copy of the plaint in O.S.No.155 of 1997, wherein there is an admission of the defendants herein that the land to the South of their land, i.e., the plaint schedule land is that of the plaintiffs herein. The plaintiffs had also filed exhibits A5 to A12, the copies of adangals and exhibit A13, a bunch of seven revenue receipts before the 1st appellate court. The court below in its judgment had observed as follows:

“On perusal of documents, they are adangal pahanies from 1403 to 1407, 1409 and 1415. As per the said adangal extracts filed before this Court although the plaintiffs name was appears to be pattadars, only name of Medapureddi Adinarayana, Medapureddi Nukinaidu, Medapureddi Chandrayyanayudu were shown as owners and possessors to the extent of Ac.51.34 cents. So, there is clear evidence that the plaintiffs came into possession subsequently.”
(Reproduced verbatim)

Thus, having noted that the plaintiffs are in possession, the court below had still refused to grant perpetual injunction as I.A.No.587 of 2010 was filed by the plaintiffs seeking the alternate relief of recovery of possession in case they are found to be not in possession was dismissed and the said order has become final. The court below ought to have seen that the defendants did not produce a single piece of document to prove the possession of the defendants or any third parties. Therefore, the approach of the court below, in the well considered view of this court, is not correct. The observation of the court below that the documents filed as additional evidence under exhibits A5 to A13 show that the plaintiffs came into possession subsequently is erroneous for the reason that the suit was instituted in the year 2004 whereas the copies of the adangals filed are of the years 1991, 1993, 1994, 1995, 1997 and 1999, i.e., of the years long prior to the suit. Thus, on a careful examination of the facts and the evidence, it is clear that the findings of the courts below,

particularly of the 1st appellate court are perverse for improper appreciation and non-consideration of material evidence and that the said perversity in appreciation of evidence has resulted in grave injustice to the plaintiffs. This Court finds that the judgment and decree of the court below brook interference for ignoring the material evidence on record, particularly, the exhibits A5 to A13, which are copies of the adangals that clearly establish the possession of the plaintiffs prior to the suit and also as on the date of the suit. In view of the fact that the evidence brought on record by the plaintiffs, which is cogent and consistent, is not dislodged and displaced by any evidence worthy of credit adduced on the side of the defendants, it can safely be held that the evidence brought on record is sufficient, not only on the application of the test of preponderance of probabilities but also by any legal standards, to uphold the case of the plaintiffs/appellants. Further, the law is well settled that when the findings of the courts below are manifestly unreasonable and unjust in the context of evidence on record, this Court is obliged under law to set aside such erroneous findings to remedy the injustice. Therefore, the substantial questions of law are answered holding that the courts below had committed a grave error in dismissing the suit of the plaintiffs having found that the plaintiffs came into possession of the suit schedule property subsequent to the compromise decree in O.S.No.124 of 1965. Viewed thus, this Court finds that the judgments of the Court below brook interference and that there is acceptable merit in this second appeal and that, therefore, the second appeal deserves to be allowed after setting aside the judgments of the Courts below. Therefore, the substantial questions are all answered in favour of the appellants and against the defendants.

7. In the result, the Second appeal is allowed and the decree and judgment of the court below in A.S.No.178 of 2007 confirming the decree and judgment dated 21.06.2007 in O.S.No.82 of 2004 on the file of the learned Senior Civil Judge, Pithapuram are hereby set aside and the said suit is decreed in favour of the plaintiffs as prayed for, granting a perpetual injunction restraining the defendants, their men, nominees etcetera from ever interfering with the plaintiffs' peaceful possession and enjoyment over the plaint schedule land. There shall be no order as to costs.

As a sequel, miscellaneous petitions pending, if any, in this second appeal

shall stand closed.

JUSTICE M. SEETHARAMA MURTI

26th August 2015

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